

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

1. STEVE COWHERD and ALICIA
COWHERD, Individually and as next friends
of T.C. and H.C.,

Plaintiffs,

vs.

1. SAEXPLORATION SEISMIC
SERVICES, LLC, and,
2. FRANCISCO JAVIER GARCIA

Defendants.

Case No. CIV-21-729-F

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants SAExploration Seismic Services, LLC and Francisco Javier Garcia (“Defendants”), submit this Notice of Removal of *Steve Cowherd and Alicia Cowherd, Individually and as next friends of T.C. and H.C. v. SAExploration Seismic Services, LLC and Francisco Javier Garcia*, filed in the District Court of the State of Oklahoma, County of Garfield, Case No. CJ-2021-133, on the ground that this Court has original jurisdiction under 28 U.S.C. §§ 1332 and 1441 *et seq.*, diversity of citizenship exists between Plaintiffs and Defendants, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

BACKGROUND

1. On June 29, 2021, Plaintiffs filed their Petition in the District Court of Garfield County, Oklahoma. The Petition alleges counts or claims of negligence and negligence per se and seeks punitive and actual damages. Plaintiffs allege damages in

excess of the amount required for diversity jurisdiction under 28 U.S.C. § 1332. (*See* Petition, attached hereto as Exhibit 1).

2. On July 3, 2021, Plaintiffs served a copy of the Summons and Petition upon Defendant, Francisco Javier Garcia. A copy of the Summons is attached hereto as Exhibit 2. A copy of the Return of Service is attached hereto as Exhibit 3.

3. On July 2, 2021, Plaintiffs served a copy of the Summons and Petition upon Defendant, SAExploration Seismic Services, LLC. A copy of the Summons is attached hereto as Exhibit 4. A copy of the Return of Service is attached hereto as Exhibit 5.

4. Pursuant to 28 U.S.C.A. § 1446(a) and LCvR 81.2, a copy of the docket sheet is attached hereto as Exhibit 6.

REMOVAL IS TIMELY

5. This Notice of Removal is timely, as it is being filed on July 22, 2021, within 30 days of Defendants first receiving what purports to be service of a Summons and Petition setting forth the alleged claims for relief upon which this action or proceeding is based. 28 U.S.C. § 1446(b).

**THIS COURT HAS SUBJECT MATTER JURISDICTION
UNDER 28 U.S.C. § 1332 - DIVERSITY OF CITIZENSHIP**

6. Removal under 28 U.S.C. § 1441 *et seq.* is appropriate because this case is an action over which this Court would have original jurisdiction pursuant to 28 U.S.C. § 1332 as the amount in controversy exceeds \$75,000, exclusive of interest and costs; and complete diversity of citizenship exists between Plaintiffs and Defendants. 28 U.S.C. §§ 1332 & 1441.

7. The United States District Court for the Western District of Oklahoma includes the county in which the state court action is now pending (Garfield County). Thus, removal to this Court is appropriate. 28 U.S.C. § 1446(a).

THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000

8. In their Petition, Plaintiffs claim damages in excess of the amount required for diversity jurisdiction pursuant to 28 U.S.C. § 1332. (*See* Exhibit 1, Petition, at “Wherefore” paragraphs).

**COMPLETE DIVERSITY OF CITIZENSHIP EXISTS
BETWEEN PLAINTIFFS AND DEFENDANTS**

9. Diversity of citizenship is determined by the citizenship of all properly joined parties as of the date of the filing of the original Petition.

10. Upon information and belief Plaintiffs are citizens of Garfield County, Oklahoma.

11. Defendant, Francisco Javier Garcia, was a resident of San Antonio, Texas at the time of the filing. Therefore, Defendant is a citizen of Texas for purposes of diversity jurisdiction. *Smith v. Cummings*, 445 F.3d 1254, 1259 (10th Cir. 2006).

12. Defendant SAExploration Seismic Services, LLC is a limited liability company. For purposes of diversity jurisdiction, an unincorporated association “takes on the citizenship of all its members.” *Siloam Springs Hotel, L.L.C. v. Century Sur. Co.*, 781 F.3d 1233, 1238 (10th Cir. 2015) (citing *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96 (1990)). Here, SAExploration Seismic Services, LLC takes on the citizenship of its sole member, SAExploration, Inc. SAExploration, Inc. is incorporated under the laws of

Delaware with its principal place of business in Houston, Texas. Therefore, at the time of filing, Defendant SAExploration Seismic Services, LLC was a citizen of Delaware and Texas for purposes of diversity jurisdiction. (*See* 28 U.S.C. § 1332(c)(1)).

13. Thus, at the time Plaintiffs' Petition was filed, Defendants were citizens of a state other than Oklahoma and Plaintiff was a citizen of Oklahoma. Accordingly, complete diversity exists. (*See* 28 U.S.C. § 1332(a).

NOTICE GIVEN

14. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on Plaintiffs through their counsel of record. Further, notice of the filing of this Notice of Removal has been sent to the Court Clerk for the District Court of Garfield County, Oklahoma.

PRESERVATION OF RIGHTS

15. By removing this action to this Court, Defendants do not waive any defenses, objections, or motions available to it under state or federal law. Defendants expressly reserve the right to move for dismissal of Plaintiffs' claims pursuant to Rule 12 of the Federal Rules of Civil Procedure.

16. If any question arises as to the propriety of this removal, Defendants request the opportunity to conduct discovery or brief any disputed issues and to present oral argument in support of their position that this civil action is properly removable. *See McPhail v. Deere & Co.*, 529 F.3d 947, 954 (10th Cir. 2008).

WHEREFORE, based on the foregoing, Defendants SAExploration Seismic Services, LLC and Francisco Javier Garcia give notice that the above-captioned matter is

hereby removed to the United States District Court for the Western District of Oklahoma, and hereby request that this Court retain jurisdiction for all further proceedings herein.

RESPECTFULLY SUBMITTED this 22nd day of July, 2021.

FOLIART, HUFF, OTTAWAY & BOTTOM

/s/Ashley M. Thul

Monty B. Bottom-OBA# 987

Ashley M. Thul-OBA# 31245

201 Robert S. Kerr Avenue, 12th Floor

Oklahoma City, Oklahoma 73102

Telephone: (405) 232-4633

Fax: (405) 232-3462

montybottom@oklahomacounsel.com

ashleythul@oklahomacounsel.com

ATTORNEYS FOR DEFENDANTS

SAEXPLORATION SEISMIC SERVICES, LLC

AND FRANCISCO JAVIER GARCIA

CERTIFICATE OF SERVICE

[X] I hereby certify that on this 22nd day of July, 2021, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Clint A. Claypole, OBA #30045

Long Claypole & Blakley Law, PLC

P.O. Box 3623

Enid, OK 73702

Telephone: 580/233-5225

Facsimile: 580/233-3522

Attorney for Plaintiffs

s/Ashley M. Thul